

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

JOHN J. DIAMONT, JR.

Defendant.

CRIMINAL NO. 05-10154-MLW

**DEFENDANT’S OPPOSITION TO GOVERNMENT’S REQUEST TO UNSEAL
MOTIONS TO QUASH SUBPOENAS TO ACCOUNTANTS**

In its Request to Unseal Motions to Quash Subpoenas as to Accountants, the government seeks to overturn previous decisions of this Court. Because the government has provided no new information that would warrant a reconsideration of any of the Court’s previous rulings relating to the subpoenas issued by defendant John Diamont, the government’s Request should be denied.

The government points out that Mr. Diamont provided him a copy of one of the subject subpoenas “[i]n accordance with Magistrate Judge Dein’s instructions,” Request, p. 1, but appears to fault Mr. Diamont for failing to provide him with an explanation of why he provided a copy of this subpoena but not others. However, the Court made a conscious decision, not only to require Mr. Diamont to provide to the government a copy of this subpoena but not others, but, more importantly, to withhold from the government the explanation of why this subpoena but not others was to be provided.¹ The government provides no justification for overturning the Court’s decision on this point.

The government also argues that it “may have” information relevant to the resolution of the Motion to Quash, Request, p. 2, and that, as a party to this case, it is entitled to be served

¹ November 22, 2005, Sealed Memorandum of Decision and Order (doc. #34).

with all pleadings in the case. The government, however, is not a party to the issue raised by the Motion to Quash. The Motion to Quash was filed by two accounting firms that Mr. Diamont had served with subpoenas. The issues raised in the Motion to Quash are between Mr. Diamont and the accounting firms, and the government has no standing to address these issues. The Court previously granted Mr. Diamont's request to explain *ex parte* the reasons for seeking these subpoenas; granted the requests for the subpoenas themselves, in a sealed opinion in which it explained its reasoning for allowing the subpoenas; and exercised close supervision over the scope and contents of the subpoenas.

The Court carefully analyzed the subject subpoenas without any input from the government, and the government has not established why the Court should need such input now. The Court has already heard, and overruled, the government's objections to Mr. Diamont's subpoenas. The accounting firms are the ones that will have knowledge as to the burdens associated with the subpoenas, and they, along with Mr. Diamont, are the only entities that the Court need hear on this issue. The government contends that it may need to explain to the Court about the work papers from Abrams Little-Gill Loberfeld, P.C., that the government already made available to Mr. Diamont. However, Mr. Diamont's counsel is just as capable as the government of describing these previously produced documents to the Court.

Because the government has provided no justification for overturning the Court's previous rulings regarding the importance of confidentiality with regard to the subject subpoenas, the government's Request to Unseal Motions to Quash Subpoenas as to Accountants should be denied.

Respectfully submitted,

JOHN DIAMONT

By his attorneys,

/s/ Lauren M. Papenhausen
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Dated: February 7, 2006

CERTIFICATE OF SERVICE

I, Lauren M. Papenhausen, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on February 7, 2006.

/s/ Lauren M. Papenhausen

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